

APPEAL NO. 031683
FILED AUGUST 11, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on June 9, 2003. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) did not sustain a compensable occupational disease injury on _____, and did not have disability. The claimant appealed, disputing the determinations essentially on sufficiency of the evidence. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in his determinations on the issues of occupational disease injury and disability. Section 401.011(34) provides that an occupational disease includes a repetitive trauma injury which is defined in Section 401.011(36) and excludes an ordinary disease of life to which the public is exposed outside of employment. Section 401.011(16) defines "disability" as the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage.

The claimant testified that when she reached forward on _____, to disconnect a call, she felt a sharp sudden pain. The claimant's supervisor testified that the claimant did not report any specific incident on _____, but rather the claimant reported she was merely sitting there taking calls and she suddenly felt pain in her back. Conflicting evidence was presented on the issue of occupational disease injury. Generally, sitting is considered an ordinary activity and that without more, and without specific medical evidence to show that the activity during the course of employment caused the injury, a compensable injury would not be established. Texas Workers' Compensation Commission Appeal No. 931067, decided December 31, 1993.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established from the evidence presented. We conclude that the hearing officer's determination on the issue of occupational disease is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W. 2d 175 (Tex. 1986).

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Because we have affirmed the determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that she did not have disability.

The claimant alleges on appeal that the monthly review admitted into evidence over objection was fraudulent and should not have been relied upon by the hearing officer. The hearing officer's evidentiary rulings are reviewed using an abuse-of-discretion standard. Texas Workers' Compensation Commission Appeal No. 92165, decided June 5, 1992. To obtain a reversal of a judgment based upon the hearing officer's abuse of discretion in admitting evidence, an appellant must first show that the admission was in fact an abuse of discretion, and, also, that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. See Hernandez v. Hernandez, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). The objection to the evidence at the CCH was based on untimely exchange; there was no challenge to its authenticity at the CCH. The hearing officer noted at the CCH that testimony was given during the CCH regarding the subject matter of the admitted exhibit and that it was being admitted for a limited purpose. We do not find the hearing officer's evidentiary ruling to be an abuse of discretion. It was within the province of the hearing officer to decide the weight to be given to the evidence admitted at the CCH.

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **AMERICAN PROTECTION INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Gary L. Kilgore
Appeals Judge